

REMARKS

The office action issued by the Examiner and the citations referred to in the office action have been carefully considered.

Claims 1-40 are pending in the application. Claims 21-33 stand rejected.

Claim Rejections under 35 USC § 112

In paragraph 3 on page 2 of the December 1, 2008 Office Action, the Examiner rejects claims 30-31, alleging that the specification does not reasonably provide enablement for preventing diseases/injuries. Applicant respectfully disagrees. The specification demonstrates that the claimed invention, through its effect on pathological free radicals, stops the indicated diseases from occurring, thereby “preventing” them. Nonetheless, in an effort to advance prosecution, Applicant has amended claim 30 with this response to remove “preventing or” as recommended by the Examiner. Accordingly, the Examiner’s rejections of claims 30 and 31 under 35 U.S.C. §112 are now moot and should be withdrawn. Applicant respectfully requests allowance of claims 30-31.

Claim Rejections under 35 USC § 102/103

In paragraph 5 on page 4 of the December 1, 2008 Office Action, the Examiner rejects claims 21-23 as being allegedly anticipated by or obvious over Bobbio, et al., “Stability and Stabilization of the Anthocyanins from *Euterpe oleracea* Mart,” *Acta Alimentaria*, Vol 31 (4), pp. 371-377 (2002) (“Bobbio”). In making his rejection, the Examiner states, “A freeze-dried composition of *Euterpe oleracea* (also known as Acai) fruit pulp is claimed. Dependent claims include the composition further comprising a pharmaceutically acceptable carrier. The cited reference discloses a commercially freeze-dried Acai fruit preparation, which appears to be identical to the presently claimed freeze-dried Acai fruit pulp composition...” Applicant respectfully disagrees for the various independent reasons explained herein.

The Bobbio reference is directed to “aqueous extracts of fruit of *Euterpe oleracea*.[®]” Applicant’s claim 21 requires a dietary composition of freeze-dried *Euterpe oleracea* (Acai) fruit **pulp** with (1) a total anthocyanin concentration greater than about 1 milligram per gram total weight, (2) an **ORAC_{FL}** value greater than about 350 micromole TE per gram total weight and (3) **residual water content less than about 3 weight percent of the total weight**. The Bobbio reference does not teach or suggest, and it is not within the purview of the common knowledge of one of ordinary skill, to provide a composition with the claimed ORAC and water content values. Similarly, the Bobbio reference does not teach or suggest a composition with either (1) **a cyclooxygenase inhibition value greater than about 15 Aspirin[®] mg equivalent per gram total weight** or (2) a residual water content less than about 3 weight percent of the total weight.

Despite the Examiner’s comments, the Bobbio reference does not teach or suggest the instantly claimed compositions of claim 21 and 22. More specifically, the Bobbio reference does not teach or suggest a composition of Acai fruit **pulp** with the claimed **ORAC value greater than about 350 micromole, water content less than about 3 weight percent of the total weight or cyclooxygenase inhibition value greater than about 15 Aspirin[®] mg equivalent per gram total weight** that provides the various benefits and advantages disclosed and claimed. Moreover, the Bobbio reference discloses only “aqueous extracts” of fruit of *Euterpe oleracea* and is not directed to the pulp or the fruit itself. Accordingly, the Bobbio reference, alone or in combination with the other prior art of record and the knowledge of one of ordinary skill in the art, does not teach, suggest or make obvious the claimed compositions of claims 21 and 22. Despite the Examiner’s conclusion, the claimed compositions would not be obvious to one of ordinary skill in light of the prior art. Accordingly, the Examiner’s rejection of claims 21 and 22 is improper and should be withdrawn.

Claim Rejections under 35 USC § 103

In paragraph 4 on page 6 of the December 1, 2008 Office Action the Examiner rejects claims 21-33 as being allegedly unpatentable over Bobbio.

Applicant's discussion with regards to the Examiner's rejection of claims 21 and 22 under 35 U.S.C. §103 is not repeated and is incorporated herein by reference. Even assuming the Examiner's assumptions are correct regarding what he believes are conventional processing steps, the Examiner's rejection of claims 24-33 provides no support for why the Bobbio reference or any other reference of record teaches or suggests that each of the following highlighted portions of the indicated claims are within the knowledge of a person of ordinary skill.

For claim 24, the Bobbio reference does not teach or suggest, and there is no indication, that it is within the knowledge of a person of ordinary skill that the method of producing a stable and palatable Acai-based dietary supplement composition includes:

- (1) washing the Acai fruits with **water at a temperature of about 75 degrees C to 100 degrees C for a period of time of about 5 seconds to 10 minutes**;
- (2) freezing the Acai fruit pulp to **a temperature less than about -5 degrees C**; and
- (3) **freeze-drying the Acai fruit pulp under conditions to yield a granular, freeze-dried Acai fruit pulp powder with a residual water content of less than 3 weight percent**;
- (4) **so the freeze-dried Acai fruit pulp powder is more stable and palatable than an Acai pulp preparation.**

For claim 26, the Bobbio reference does not teach or suggest, and there is no indication, that it is within the knowledge of a person of ordinary skill that the method of producing a stable and palatable Acai-based dietary supplement composition includes washing the Acai fruits in **water at a temperature of about 80 degrees C for a period of time of about 10 seconds**.

For claim 27, the Bobbio reference does not teach or suggest, and there is no indication, that it is within the knowledge of a person of ordinary skill that the method of producing a stable and palatable Acai-based dietary supplement composition includes the hulling step being carried out **using about 1 liter of water per 2 kg of Acai fruits**.

For claim 28, the Bobbio reference does not teach or suggest, and there is no indication, that it is within the knowledge of a person of ordinary skill that the Acai-based dietary supplement composition has an ORAC_{FL} value of greater than about 350 micromole TE per gram total weight.

For claim 29, the Bobbio reference does not teach or suggest, and there is no indication, that it is within the knowledge of a person of ordinary skill that the Acai-based dietary supplement composition has a cyclooxygenase inhibition value greater than about 15 Aspirin[®] mg equivalent per gram total weight.

For claims 30 and 32, the Bobbio reference does not teach or suggest, and there is no indication, that it is within the knowledge of a person of ordinary skill that administering to the mammal an effective amount of the Acai-based dietary supplement composition of claims 21-23, quenches free radicals and reduces the damage induced by pathological free radicals. In fact the Bobbio reference is silent regarding free radicals and makes no mention of them whatsoever.

For claims 31 and 33, the Bobbio reference does not teach or suggest, and there is no indication, that it is within the knowledge of a person of ordinary skill that the claimed Acai-based dietary supplement composition is effective to treat cancer, colon cancer, breast cancer, inflammatory bowel disease, Crohn's disease, vascular disease, arthritis, ulcer, acute respiratory distress syndrome, ischemia-reperfusion injury, neurodegenerative disorders, autism, Parkinson's Disease, Alzheimer's Disease, gastrointestinal disease, tissue injury induced by inflammation or tissue injury induced by an environmental toxin. In fact, the Bobbio reference is silent regarding all of these conditions.

It is respectfully submitted that all of the Examiner's objections have been successfully traversed and that the application is now in order for allowance. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to **Deposit Account Number 50-2638**. Please ensure that

Attorney Docket Number 067762-010151 is referred to when charging any payments or credits for this case.

Respectfully submitted,

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